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Amendment

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Offered by:

SEN. RORABACK, 30th Dist.

To: Subst. Senate Bill No. 1356

File No. 195

Cal. No. 194

**"AN ACT CONCERNING THE ESTABLISHMENT OF A
CONNECTICUT MILK COMMISSION."**

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. Section 22-26bb of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective July 1, 2007*):

5 As used in this chapter:

6 (a) "Agricultural land" means any land in the state suitable by
7 reference to soil types, existing and past use of such land for
8 agricultural purposes and other relevant factors for the cultivation of
9 plants for production of human food and fiber or production of other
10 useful and valuable plant products and for the production of animals,
11 livestock and poultry useful to man and the environment, and land
12 capable of providing economically profitable farm units, and may
13 include adjacent pastures, wooded land, natural drainage areas and
14 other adjacent open areas;

- 15 (b) "Commissioner" means the Commissioner of Agriculture;
- 16 (c) "Department" means the Department of Agriculture;
- 17 (d) "Development rights" means the rights of the fee simple owner
18 or leaseholder of agricultural land to develop, construct on, sell, lease
19 or otherwise improve the agricultural land for uses that result in
20 rendering such land no longer agricultural land, but shall not be
21 construed to include: (1) The uses defined in subsection (q) of section
22 1-1, (2) the rights of the fee owner or leaseholder of agricultural land to
23 develop, construct on, sell, give or transfer in any way the property in
24 its entirety, lease the property for a term of less than twenty-five years
25 or otherwise improve the agricultural land to preserve, maintain,
26 operate or continue such land as agricultural land, including but not
27 limited to construction thereon of residences for persons directly
28 incidental to farm operation and buildings for animals, roadside
29 stands and farm markets for sale to the consumer of food products and
30 ornamental plants, facilities for the storing of equipment and products
31 or processing thereof or such other improvements, activities and uses
32 thereon as may be directly or incidentally related to the operation of
33 the agricultural enterprise, as long as the acreage and productivity of
34 arable land for crops is not materially decreased and due consideration
35 is given to the impact of any decrease in acreage or productivity of
36 such arable land upon the total farm operation, except that new
37 construction or modification of an existing farm building necessary to
38 the operation of a farm on prime farmland, as defined by the United
39 States Department of Agriculture, of which the state has purchased
40 development rights shall be limited to not more than five per cent of
41 the total of such prime farmland, (3) the rights of the fee owner or
42 leaseholder to provide for the extraction of gravel or like natural
43 elements to be used on the farm for purposes directly or incidentally
44 related to the operation of the agricultural enterprise, or (4) the existing
45 water and mineral rights, exclusive of gravel, of the fee owner or
46 leaseholder;
- 47 (e) "Owner" means any person, corporation, limited liability

48 company, partnership, trust, municipal corporation, public utility or
49 any other private or public entity that [shall be] is the fee simple owner
50 of agricultural land or who [shall] by operation of law [have] has the
51 power to exercise the rights of a fee simple owner;

52 (f) "Leaseholder" means any person, corporation, limited liability
53 company, partnership, trust, municipal corporation, public utility or
54 any other private or public entity that is the holder of a long term
55 leasehold interest having not less than seven hundred years to run as
56 of the time of acquisition of development rights to such land or interest
57 pursuant to section 22-26cc;

58 [(f)] (g) "Municipality" means any city, town, borough, district, or
59 association with municipal powers;

60 [(g)] (h) "Prime farmland" means soils defined by the United States
61 Department of Agriculture as the best suited to producing food, feed,
62 forage, fiber and oilseed crops;

63 [(h)] (i) "Restricted agricultural land" means land and the
64 improvements thereon for which development rights are held by the
65 state of Connecticut;

66 [(i)] (j) "Restriction" means the encumbrance on development uses
67 placed on restricted lands as a result of the acquisition of development
68 rights by the state of Connecticut;

69 [(j)] (k) "Residences" means single-family residential dwellings and
70 any associated on-site septic disposal system or potable well;

71 [(k)] (l) "Building" means (1) any permanent structure used for
72 holding animals, (2) roadside stands and farm markets for sale to the
73 consumer of food products and ornamental plants, (3) facilities for the
74 storing of equipment and products or the processing of products, and
75 (4) animal waste storage facilities;

76 [(l)] (m) "Arable land" means land currently used for the production
77 of crops or pasture and land considered prime and important farmland

78 soil by the United States Department of Agriculture;

79 [(m)] (n) "Gravel or like natural elements" means rounded or
80 angular fragments of rock and associated soil material;

81 [(n)] (o) "Economically profitable farm unit" means an acreage of
82 arable land capable of producing a sustained annual gross income of
83 significant value as determined by the commissioner;

84 [(o)] (p) "The property in its entirety" means the entire acreage of
85 restricted land without division or subdivision;

86 [(p)] (q) "Persons directly incidental to the farm operation" means
87 any person who participates in the farm operation on the restricted
88 land on a full-time basis and any owner or leaseholder of the restricted
89 land regardless of whether or not he or she participates in the farm
90 operation on a full-time basis.

91 Sec. 502. Section 22-26cc of the general statutes is repealed and the
92 following is substituted in lieu thereof (*Effective July 1, 2007*):

93 (a) There is established within the Department of Agriculture a
94 program to solicit, from the owners or leaseholders of agricultural
95 land, offers to [sell] transfer the development rights to such land and to
96 inform the public of the purposes, goals and provisions of this chapter.
97 The commissioner, with the approval of the State Properties Review
98 Board, shall have the power to acquire or accept as a gift, on behalf of
99 the state, the development rights of any agricultural land, if offered by
100 the owner or leaseholder. Notice of the offer shall be filed in the land
101 records wherein the agricultural land is situated. If the ownership or
102 the leasehold interest of any land for which development rights have
103 been offered is transferred, the offer shall be effective until the
104 subsequent owner or leaseholder revokes the offer in writing. The state
105 conservation and development plan established pursuant to section
106 16a-24 shall be applied as an advisory document to the acquisition of
107 development rights of any agricultural lands. The factors to be
108 considered by the commissioner in deciding whether or not to acquire

109 such rights shall include, but not be limited to, the following: (1) The
110 probability that the land will be sold for nonagricultural purposes; (2)
111 the current productivity of such land and the likelihood of continued
112 productivity; (3) the suitability of the land as to soil classification and
113 other criteria for agricultural use; (4) the degree to which such
114 acquisition would contribute to the preservation of the agricultural
115 potential of the state; (5) any encumbrances on such land; (6) the cost
116 of acquiring such rights; and (7) the degree to which such acquisition
117 would mitigate damage due to flood hazards. Ownership by a
118 nonprofit organization authorized to hold land for conservation and
119 preservation purposes of land which prior to such ownership qualified
120 for the program established pursuant to this section shall not be
121 deemed to diminish the probability that the land will be sold for
122 nonagricultural purposes. After a preliminary evaluation of such
123 factors by the Commissioner of Agriculture, he shall obtain and review
124 one or more fee appraisals of the property selected in order to
125 determine the value of the development rights of such property. The
126 commissioner shall notify the Department of Transportation, the
127 Department of Economic and Community Development, the
128 Department of Environmental Protection and the Office of Policy and
129 Management that such property is being appraised. Any appraisal of
130 the value of such land obtained by the owner or leaseholder and
131 performed in a manner approved by the commissioner shall be
132 considered by the commissioner in making such determination. The
133 value of development rights for all purposes of this section shall be the
134 difference between the value of the property for its highest and best
135 use and its value for agricultural purposes as determined by the
136 commissioner. The use or presence of pollutants or chemicals in the
137 soil shall not be deemed to diminish the agricultural value of the land
138 or to prohibit the commissioner from acquiring the development rights
139 to such land. The commissioner may purchase development rights for
140 a lesser amount provided he complies with all factors for acquisition
141 specified in this subsection and in any implementing regulations. In
142 determining the value of the property for its highest and best use,
143 consideration shall be given but not limited to sales of comparable

144 properties in the general area, use of which was unrestricted at the
145 time of sale.

146 (b) Upon the acquisition by the commissioner of the development
147 rights of agricultural land, the commissioner shall cause to be filed in
148 the appropriate land records and in the office of the Secretary of the
149 State a notice of such acquisition which shall set forth a description of
150 the agricultural land as will be sufficient to give any prospective
151 purchaser of such agricultural land or creditor of the owner or
152 leaseholder thereof notice of such restriction. Upon such filing, the
153 owner or leaseholder of such agricultural land shall not be permitted
154 to exercise development rights with respect to such land, and such
155 development rights shall be considered and deemed dedicated to the
156 state in perpetuity, except as hereinafter provided. If the title to, or
157 leasehold interest in, such restricted land is to be [sold] transferred, the
158 owner or leaseholder shall notify, in writing, the commissioner of such
159 impending [sale] transfer not more than ninety days before transfer of
160 [title to] the land and shall provide the commissioner with the name
161 and address of the new owner or leaseholder.

162 (c) The commissioner shall have no power to release such land from
163 its agricultural restriction, except as set forth in this subsection. The
164 commissioner, in consultation with the Commissioner of
165 Environmental Protection and such advisory groups as the
166 Commissioner of Agriculture may appoint, may approve (1) a petition
167 by the owner or leaseholder of the restricted agricultural land to
168 remove such restriction provided such petition is approved by
169 resolution of the legislative body of the town, or (2) a petition by the
170 legislative body of the town in which such land is situated to remove
171 such restriction provided such petition is approved in writing by said
172 owner or leaseholder. Upon approval of such a petition by the
173 commissioner, the legislative body of the town shall submit to the
174 qualified voters of such town the question of removing the agricultural
175 restriction from such land or a part thereof, at a referendum held at a
176 regular election or a special election warned and called for that
177 purpose. In the event a majority of those voting at such referendum are

178 in favor of such removal, the restriction shall be removed from the
179 agricultural land upon filing of the certified results of such referendum
180 in the land records and the office of the Secretary of the State, and the
181 commissioner shall convey the development rights to such owner or
182 leaseholder provided such owner or leaseholder shall pay the
183 commissioner an amount equal to the value of such rights. Such
184 petition shall set forth the facts and circumstances upon which the
185 commissioner shall consider approval, and said commissioner shall
186 deny such approval unless he determines that the public interest is
187 such that there is an overriding necessity to relinquish control of the
188 development rights. The commissioner shall hold at least one public
189 hearing prior to the initiation of any proceedings hereunder. The
190 expenses, if any, of the hearing and the referendum shall be borne by
191 the petitioner. In the event that the state sells any development rights
192 under the procedure provided in this subsection, it shall receive the
193 value of such rights.

194 (d) Whenever the commissioner acquires the development rights of
195 any agricultural land and the purchase price of such development
196 rights is ten thousand dollars or more, said commissioner and the
197 owner or leaseholder of such land may enter into a written agreement
198 which provides for the payment of the purchase price in two or three
199 annual installments, but no interest shall be paid on any unpaid
200 balance of such purchase price.

201 (e) Whenever the commissioner acquires the development rights to
202 any agricultural land, and any municipality in which all or part of the
203 land is situated paid a part of the purchase price from a fund
204 established pursuant to section 7-131q, such municipality and the state
205 may jointly own the development rights, provided joint ownership by
206 such municipality shall be limited to land within its boundaries. The
207 land may be released from its agricultural restriction in accordance
208 with the provisions of subsection (c) of this section. The commissioner
209 shall adopt regulations in accordance with the provisions of chapter 54
210 establishing procedures for the joint acquisition of development rights
211 to agricultural land.

212 (f) The acquisition of the development rights to any agricultural
213 land by the commissioner shall not be deemed to be ownership of such
214 land and the state shall not be liable for pollution or contamination of
215 such land and no person may bring a civil action against the state for
216 damages resulting from pollution or contamination of such
217 agricultural land.

218 (g) The commissioner may issue a letter of intent requesting the
219 assistance of a nonprofit organization, as defined in Section 501(c)(3) of
220 the Internal Revenue Code of 1986, or any subsequent corresponding
221 internal revenue code of the United States, as from time to time
222 amended, in acquiring the development rights to certain agricultural
223 land. If such organization acquires such rights it may sell them to the
224 commissioner based on a purchase agreement. Such agreement may
225 include reimbursement for reasonable expenses incurred in the
226 acquisition of the rights as well as payment for the rights. The
227 commissioner may enter into joint ownership agreements to acquire
228 the development rights to any qualified agricultural land with any
229 nonprofit organization, as defined in Section 501(c)(3) of the Internal
230 Revenue Code of 1986, or any subsequent corresponding internal
231 revenue code of the United States, as from time to time amended,
232 provided the mission of such nonprofit organization is the permanent
233 protection of agricultural land for the purposes of continued
234 agricultural use.

235 (h) In addition to development rights, the commissioner may
236 acquire or accept as a gift the rights of the owner or leaseholder to
237 construct any residences or any farm structures on agricultural land.

238 (i) The Commissioner of Agriculture, pursuant to any cooperative
239 agreement with the United States Department of Agriculture for the
240 disbursement of funds under federal law, may require that any
241 property to which rights are acquired under this section with such
242 funds shall be managed in accordance with a conservation plan which
243 utilizes the standards and specifications of the Natural Resources
244 Conservation Service field office technical guide and is approved by

245 such service. Any instrument by which the commissioner acquires
246 such rights and for which any such funds are used may provide for a
247 contingent right in the United States of America in the event that the
248 state of Connecticut fails to enforce any of the terms of its rights
249 acquired under this section which failure shall be determined by the
250 United States Secretary of Agriculture. Such contingent right shall
251 entitle the secretary to enforce any rights acquired by the state under
252 this section by any authority provided under law. Such instrument
253 may provide that such rights shall become vested in the United States
254 of America in the event that the state of Connecticut attempts to
255 terminate, transfer or otherwise divest itself of any such rights without
256 the prior consent of the United States Secretary of Agriculture and
257 payment of consideration to the United States and may further provide
258 that title to such rights may be held by the United States of America at
259 any time at the request of the United States Secretary of Agriculture. In
260 connection with such an agreement, the commissioner may hold the
261 United States harmless from any action based on negligence in the
262 procurement or management of any rights acquired under this section
263 and may assure that proper title evidence is secured, that the title is
264 insured to the amount of the federal cost paid for the interest of the
265 United States of America and that, in the event of a failure of title, as
266 determined by a court of competent jurisdiction, and payment of
267 insurance to the state, the state will reimburse the United States for the
268 amount of the federal cost paid.

269 (j) The commissioner, when acquiring the development rights of any
270 agricultural lands on behalf of the state, may incorporate deed
271 requirements in accordance with the provisions of the federal Farm
272 and Ranch Lands Protection Program, 7 CFR 1491.1, et seq.

273 Sec. 503. Section 22-26jj of the general statutes is repealed and the
274 following is substituted in lieu thereof (*Effective July 1, 2007*):

275 (a) The Commissioner of Agriculture, with the approval of the State
276 Properties Review Board, may acquire by purchase or accept as a gift,
277 on behalf of the state, the fee simple title of any agricultural real

278 property and any personal property related to such real property,
279 including, but not limited to, machinery, equipment, fixtures and
280 livestock. The state conservation and development plan established
281 pursuant to chapter 297 shall be used as an advisory document in
282 connection with acquisition of such property. The commissioner, in
283 deciding whether or not to acquire such property, shall consider all of
284 the factors stated in section 22-26cc and shall further consider the
285 likelihood of subsequent sale of such property by the department for
286 agricultural purposes, subject to the state's retention of development
287 rights. After a preliminary evaluation of such factors, the
288 Commissioner of Agriculture shall obtain and review one or more fee
289 appraisals of the property in order to determine the value of such
290 property. Each such appraisal shall include an itemization of (1) the
291 total value of the land, (2) the value of the land as agricultural land, (3)
292 the value of the development rights of the land, and (4) the value of
293 any related personal property proposed to be included in any sale. The
294 commissioner shall give notice of any such appraisal to the
295 Departments of Transportation, Economic and Community
296 Development and Environmental Protection and the Office of Policy
297 and Management. Any such appraisal may be obtained by the owner
298 or leaseholder of the property and, if performed in a manner approved
299 by the commissioner, shall be considered by the commissioner in
300 making such determination. The commissioner may purchase such
301 property for a lesser price than any price suggested by any such
302 appraisal provided all considerations for acquisition specified in this
303 subsection are taken into account. In determining the value of the
304 property, consideration shall be given to sales of comparable
305 properties in the general vicinity.

306 (b) After the acquisition of the fee simple title of any agricultural
307 real property and any related personal property, the commissioner
308 shall sell such property, exclusive of any development rights, for
309 agricultural purposes as soon as practicable. The state shall retain any
310 development rights. The commissioner may lease or otherwise
311 transfer, assign or manage such property for agricultural, open space

312 or other qualified purposes, in accordance with subsection (d) of this
313 section, until such time as a sale as required by this section is
314 completed.

315 (c) The commissioner may lease all or part of one property acquired
316 by him under this section as part of a demonstration project, in
317 accordance with subsection (d) of this section, provided such project is
318 approved by the Secretary of the Office of Policy and Management.
319 Such property may be leased to one or more agricultural users for a
320 period not to exceed five years. Such lease may be renewed for periods
321 not to exceed five years. Any property leased under such
322 demonstration project shall be exempt from taxation by the
323 municipality in which the property is located. The assessed valuation
324 of the property shall be included with the assessed valuation of state-
325 owned land and buildings for purposes of determining the state's
326 grant in lieu of taxes under the provisions of section 12-19a.

327 (d) No contract to sell, lease or otherwise transfer, assign or manage
328 such property for agricultural, open space or other qualified purposes
329 shall be entered into by the commissioner unless there has been a
330 finding of the State Treasurer that such contract will preserve the
331 exclusion from federal taxation, if any, of the interest on the bonds of
332 the state issued to finance such acquisition. Any proceeds derived from
333 any such contract shall not be deemed revenues of the General Fund
334 and shall be deposited in the appropriate bond proceeds account. Any
335 such proceeds shall be applied, upon allotment thereof, to acquisition
336 of additional agricultural real property and related personal property
337 or, upon approval of the State Bond Commission, for such other
338 authorized capital purposes which the State Treasurer finds will best
339 assure the preservation of such exclusion from federal taxation, if any,
340 including payment of the principal, redemption price, if any, or
341 interest on the bonds issued for the purchase of the agricultural
342 property."